

## FREEDOM COURT REPORTING

Page 81

1 your own opinions on what she meant or  
2 what she intended?

3 A. I didn't know what she intended  
4 to do.

5 Q. Okay.

6 MR. BROWN: Let's certify that  
7 first question, please.

8 THE WITNESS: I was just begging  
9 and pleading.

10 MR. TINNEY: You answered the  
11 question, Steve.

12 Q. (By Mr. Brown) That's fine.

13 Are you critical of the  
14 treatment that Dr. Shirah did for you?

15 A. No. He was just treating me for  
16 what he thought it was.

17 Q. Okay. And you thought that it  
18 was okay to go to Dr. Shirah before --

19 A. That's who they told me to go  
20 to, so I didn't, you know, have no  
21 choice.

22 Q. Okay. Okay. All right. Now,  
23 the next week was November the 1st

## FREEDOM COURT REPORTING

Page 82

1 through November the 5th. Those were the  
2 business days. I was looking at a  
3 calendar, so if you would trust me on  
4 that. Did you talk to her between  
5 November 1st and November 5th,  
6 Ms. Victoria?

7 A. I can't remember whether I did  
8 or not.

9 Q. Okay.

10 A. I talked to her lots.

11 Q. Okay. How about during the week  
12 of November the 8th through November  
13 12th, do you recall any conversations  
14 with her?

15 A. I might have. I'm not sure. I  
16 couldn't guarantee it.

17 Q. Okay. But you don't recall.  
18 When you're describing to me your  
19 conversations, you don't recall the  
20 specific days?

21 A. No, I can't remember the  
22 specific days.

23 Q. And you don't recall the

## FREEDOM COURT REPORTING

Page 83

1 specific number of times that y'all  
2 talked?

3 A. No, but it was several.

4 Q. Okay. Do you think it was more  
5 or less than five?

6 A. Oh, it was more.

7 Q. Okay. Do you think it was more  
8 or less than ten?

9 A. I imagine it was more.

10 Q. More than ten?

11 A. Yeah.

12 Q. Okay.

13 A. Because every week, I'd call her  
14 and ask her when could they do it, when  
15 can I get my surgery.

16 Q. And she was telling you as soon  
17 as Dr. Howorth send us the stuff, and  
18 then you were calling the doctor, and the  
19 doctor said I sent it. And it seems like  
20 there was just a lot of confusion?

21 A. A lot of confusion, and I was  
22 the one suffering in pain.

23 Q. Okay. Something going on

## FREEDOM COURT REPORTING

Page 84

1 between the doctor's office and CMI?

2 A. Yeah.

3 Q. And that was the reason you  
4 weren't getting your surgery?

5 A. That's right.

6 Q. Okay. And CMI was saying, "he  
7 hasn't done what we asked him to do," and  
8 he was saying, "I have done what they  
9 asked me to do," and all that kind of  
10 stuff; right?

11 A. Yeah.

12 Q. Do you know if Ms. Heppes had  
13 any communication with Dr. Shirah or how  
14 many times -- not Shirah -- Dr. Howorth's  
15 office?

16 A. I'm pretty sure she called them  
17 because she said she called them to make  
18 sure she got what she needed sent to her.

19 Q. And do you have any kind of  
20 evidence or know the specific number of  
21 times or the days that those phone calls  
22 occurred?

23 A. I couldn't tell you that.

## FREEDOM COURT REPORTING

Page 85

1 Q. All right. And during all this  
2 time, I think you said you were at home  
3 during the day and couldn't sleep?

4 A. I couldn't sleep because I was  
5 hurting.

6 Q. And you were still going to work  
7 at night?

8 A. They was making me come up there  
9 every night. I couldn't take my pain  
10 medicine because it would make me so  
11 sleepy and drowsy, so I was just stuck.

12 Q. Okay. Did you have  
13 conversations with anybody other than  
14 Ms. Heppes out at CMI about that surgery?

15 A. She was the only one.  
16 Ms. Victoria took care of all that.

17 Q. And after Dr. Howorth told you  
18 that he wanted to do surgery, and she was  
19 telling you that they were waiting for,  
20 you know, information and all that, did  
21 you have any conversations with anybody  
22 at the store about what was going on?

23 A. Yeah. I talked to Rhonda and

## FREEDOM COURT REPORTING

Page 86

1 some of the management and everything and  
2 told them how I was displeased with it  
3 because they wouldn't, you know, give me  
4 my surgery.

5 Q. Okay. And what did they tell  
6 you?

7 A. They said that it was out of  
8 their hands, that workman's comp had to  
9 take care of it.

10 Q. Okay. Rhonda, was that Rhonda  
11 Walker?

12 A. Rhonda Walker. She even  
13 called -- she even called her one time.

14 Q. She called CMI?

15 A. Called Victoria one time.

16 Q. Were you there when she called  
17 them?

18 A. No. She told me she'd call her  
19 to find out what the problem was.

20 Q. Did she ever tell you what the  
21 problem was or what she had found out?

22 A. She just said they didn't have  
23 the right paperwork.

## FREEDOM COURT REPORTING

Page 87

1 Q. Okay. Anybody else at the store  
2 other than Ms. Rhonda?

3 A. As far as I know, nobody else  
4 did.

5 Q. Do you remember talking to  
6 Charlotte Woody about it?

7 A. Charlotte might have called her  
8 some.

9 Q. But you don't know?

10 A. I don't know.

11 Q. How about Mr. Cheatwood?

12 A. Chris Cheatwood.

13 Q. Do you know if he ever called  
14 for you?

15 A. No. He wasn't there very long.  
16 He transferred.

17 Q. Okay. So, at the store, the  
18 only people you would have had  
19 communications with were Rhonda Walker  
20 and Charlotte Woody?

21 A. Charlotte Woody.

22 Q. All right. And they were always  
23 fine to you, weren't they?



## FREEDOM COURT REPORTING

Page 88

1 A. Yeah.

2 Q. Okay. And Ms. Heppes -- you  
3 know, you talk about conversations with  
4 her. Was she ever mean to you or rude?

5 A. She got kind of rude on the  
6 phone a couple of times.

7 Q. Okay. Did she ever tell you  
8 things like, you know, leave me alone or  
9 stuff like that?

10 A. No. She just said we're trying  
11 to do it as fast as we can. I said, "But  
12 you're killing me in same process."

13 Q. Okay. So, was -- did you think  
14 that maybe she was just frustrated that  
15 she --

16 A. I don't know.

17 Q. Okay. That's fine.

18 A. I don't know.

19 Q. And the only person that you can  
20 remember talking to at Dr. Howorth's  
21 office was Amy?

22 A. Secretary.

23 Q. You think it was Amy?



## FREEDOM COURT REPORTING

Page 89

1 A. Yeah, I think her name was Amy.

2 Q. Did they say anything about what  
3 was taking CMI so long? Did they tell  
4 you anything?

5 A. They couldn't tell me. They  
6 said they didn't know why they was  
7 holding up. They said, "Dr. Howorth  
8 wants you in surgery, and we don't know  
9 what the hold up is on it."

10 Q. Okay. And how many times did  
11 Ms. Heppes tell you that she wanted to  
12 have another opinion?

13 A. I called her about at least once  
14 a week, and she said that she needed two  
15 more doctors to look at it. I said, "You  
16 done got Dr. Shirah and Dr. Howorth." I  
17 said, "Who else do you need?" You know,  
18 she said they had two more company  
19 doctors that they wanted to look at it.

20 Q. Did she tell you who the company  
21 doctors was?

22 A. She didn't tell me who no doctor  
23 was.

## FREEDOM COURT REPORTING

Page 90

1 Q. And she didn't tell you if she  
2 wanted you to go be seen by somebody  
3 else?

4 A. Nobody besides Howorth.

5 Q. So, do you know whether she just  
6 wanted to have the records reviewed by  
7 somebody?

8 A. She just kept saying she didn't  
9 have the proper paperwork.

10 Q. Okay.

11 A. Kept putting it off.

12 Q. Do you know when Dr. Howorth  
13 finally -- strike that.

14 Do you know when Dr. Howorth  
15 actually sent the surgery requests to  
16 CMI?

17 A. I don't know exactly when he  
18 sent it. It had to be from the first  
19 time I seen him until within 30 -- it was  
20 about 30 days after that before I had  
21 surgery.

22 Q. Okay. And was it your  
23 understanding that they had to have some

## FREEDOM COURT REPORTING

Page 91

1 kind of a request or an authorization  
2 from the doctor before they could  
3 schedule the surgery?

4 A. I don't know. I don't really  
5 know what the problem was. She just kept  
6 saying they didn't have the right  
7 paperwork and they needed the MRI.

8 Q. And you assumed that Dr. Howorth  
9 sent the paperwork?

10 A. Yeah. He told me. I called his  
11 office. He said, "We sent them  
12 everything we've got."

13 Q. Now, when did you find out --  
14 what day was it that you found out that  
15 the surgery had actually been approved?

16 A. They called me on a -- I think  
17 it was Wednesday and told me they wanted  
18 me in there on that Monday, I think.

19 Q. And on the day they called you,  
20 they called you at home; right?

21 A. Uh-huh (affirmative).

22 Q. And was that Ms. Victoria?

23 A. Victoria, she had already

## FREEDOM COURT REPORTING

Page 92

1 approved it. She finally approved it.

2 Q. And did she tell you that they  
3 had finally gotten the paperwork from the  
4 doctor?

5 A. Finally.

6 Q. Okay. And so they approved it?

7 A. Then I had to go down on Friday  
8 and get preadmitted and then go back  
9 Monday for surgery.

10 Q. All right. And that was at  
11 Russell Hospital?

12 A. Russell Hospital.

13 Q. Okay.

14 A. Alex City.

15 Q. So, you recall that she called  
16 you one day, you went to the hospital the  
17 next day to get preregistered or fill out  
18 some paperwork?

19 A. Yeah. Because they called me  
20 and told me to get all my --  
21 preregistered and everything on Friday  
22 and be ready to have surgery on Monday.

23 Q. And then you had the surgery on

## FREEDOM COURT REPORTING

Page 93

1 Monday?

2 A. On the 29th.

3 Q. So, if the records from Russell  
4 Hospital show that you went in there on  
5 the 26th, you don't have any reason to  
6 doubt that, do you?

7 A. No. I just went down there and  
8 got preadmitted on a Friday. And then  
9 there was Saturday and Sunday in between,  
10 and then I had surgery on Monday.

11 Q. Is that your signature there?

12 A. Yes, it looks like my signature.

13 Q. Okay. This is just a  
14 preadmission sheet from Russell Hospital.

15 And was the surgery inpatient?  
16 Did you have to spend the night in the  
17 hospital?

18 A. Oh, they had me out of there  
19 that evening.

20 Q. Okay.

21 A. I was still -- I was still under  
22 the influence of stuff. I didn't even  
23 know where I was at. My son had to tote

## FREEDOM COURT REPORTING

Page 94

1 me to the car. They wanted me out of  
2 there as quick as possible.

3 Q. Did they get you in real early?

4 A. Yeah. I was in there, I think,  
5 around 9:00 or 10:00. They had me out of  
6 there by 3:00 o'clock. I don't even  
7 remember leaving there. I had to stop  
8 and throw up on the side of the road.

9 Q. That stuff was making you --

10 A. Yeah. The anesthesiologist even  
11 had to walk --

12 Q. -- making you nauseated?

13 A. Yeah. My son had to tote me to  
14 the car. They didn't want me in there no  
15 longer than what they had to.

16 Q. Okay. And did Ms. Heppes --  
17 Ms. Victoria, did she call you at home  
18 and tell you that the surgery was being  
19 scheduled?

20 A. I can't even remember if she  
21 called me or Dr. Howorth called me. One  
22 of -- I can't remember which one called  
23 me. I think Amy called me and told me I

## FREEDOM COURT REPORTING

Page 95

1 needed to be preadmitted on that Friday  
2 and he wanted surgery on that Monday  
3 morning. Then I think -- I think that's  
4 the way it happened. So, I had to make  
5 two trips down there Friday and then go  
6 back and be admitted on Monday.

7 Q. How long does it take to get  
8 from your house to Alexander City?

9 A. It's about -- I had to keep up  
10 with my mileage. It was 46 miles down  
11 there and 46 miles back.

12 Q. Now, the surgery was paid for by  
13 comp?

14 A. Yeah.

15 Q. You never got a bill?

16 A. Oh, yeah, I got several bills.

17 Q. But you sent it --

18 A. I took it to Wal-Mart, and they  
19 took care of it. They sent them to me,  
20 though. But I took it to Wal-Mart, and  
21 they eventually paid it.

22 Q. Nobody ever brought suit?

23 A. They sent me one for the



## FREEDOM COURT REPORTING

Page 96

1 anesthesiologist. I had to call them  
2 about that. And I had to call  
3 Ms. Victoria, and she said she'd take  
4 care of it. It took them a while before  
5 they paid that. They sent me another  
6 bill.

7 Q. But it -- you didn't get sued by  
8 anybody?

9 A. No. Eventually, they paid them.

10 Q. Okay. Now, you talked to  
11 Ms. Victoria on the day after your  
12 surgery; right? Do you remember that?

13 A. I can't remember if I did or  
14 not. It would have had to have been on  
15 the 30th of the month. Well, I got  
16 surgery on the 29th. It was on a Monday.  
17 I might have did. I'm not for sure it's  
18 been so long.

19 Q. Okay. But you told them that  
20 you had had the surgery?

21 A. Yeah.

22 Q. Do you remember a phone call,  
23 though, where somebody called and said,

## FREEDOM COURT REPORTING

Page 97

1 "Okay. You were scheduled for surgery.  
2 Did you actually get it done"?

3 A. Yeah.

4 Q. Okay.

5 A. And the next question was, "When  
6 are you starting therapy?" I said, "the  
7 next week."

8 Q. Okay. And the doctor wanted you  
9 to stay out of work for about two months?

10 A. I was out a week.

11 Q. A week?

12 A. Yeah. I was out a week, and  
13 they made me go back.

14 Q. Who is "they"?

15 A. The doctor told me I could go  
16 back just as long as I kept my arm in a  
17 sling and didn't use it.

18 Q. Okay. And that was --

19 A. Howorth.

20 Q. And that was on December the 8th  
21 when you went back to Dr. Howorth; right?

22 A. Uh-huh (affirmative).

23 Q. Okay. Now, before you went to

## FREEDOM COURT REPORTING

Page 98

1 Dr. Howorth, you actually went to your  
2 first physical therapy appointment on  
3 like the day after or two days after the  
4 surgery, didn't you?

5 A. Yeah. I had surgery on Monday,  
6 and I started therapy, I think, on  
7 Wednesday. I went Wednesday and Friday.

8 Q. All right.

9 A. They wanted me to start therapy  
10 just as quick as possible.

11 Q. Okay. And were you wearing one  
12 of those funny slings too?

13 A. Yeah.

14 Q. Did anybody -- did Ms. Victoria  
15 ever call you and tell you to go to  
16 physical therapy? How did you find out  
17 you needed to go to physical therapy?

18 A. Dr. Howorth told me after I had  
19 surgery that he wanted me to start  
20 therapy the next following Wednesday, I  
21 think. I had surgery on Monday. He  
22 wanted me in physical therapy by  
23 Wednesday, two days later.

## FREEDOM COURT REPORTING

Page 99

1 Q. But how did you know to go to  
2 the -- is it Lake Martin Physical  
3 Therapy?

4 A. He's in the same building with  
5 Dr. Howorth right across the hall.

6 Q. Okay. And that's --

7 A. Dr. Mark Staples, I think.

8 Q. All right. And on the date of  
9 your first visit to physical therapy, you  
10 said the pain was a five on a scale of  
11 one to ten; is that right?

12 A. Oh, it was hurting.

13 Q. And you went back to Dr. Howorth  
14 on December the 8th, and that's when he  
15 told you that you could go back to work  
16 on light duty?

17 A. Yeah.

18 Q. Going back to being a --

19 A. So, I was staying up all night  
20 and going to Alex City twice a week doing  
21 physical therapy.

22 Q. Okay. Did you ask the doctor to  
23 keep you out of work longer?

## FREEDOM COURT REPORTING

Page 100

1           A.     No.   He just told me to go back  
2 just as long as I didn't use that one  
3 arm.   Just as long as I don't hurt that  
4 arm whatsoever.

5           Q.     All right.   All right.   After  
6 that visit on December the 8th, you were  
7 still going to physical therapy?

8           A.     Yeah.   I would try to -- if I  
9 had to see him, I would try to schedule  
10 it while I was already down there.

11          Q.     Okay.   And he wanted you to  
12 continue with your physical therapy?

13          A.     Yeah.   I done it for two and a  
14 half months.

15          Q.     And you went to physical therapy  
16 on the 8th, and then you went on the 9th;  
17 isn't that right?   Again, did you go two  
18 days back to back?   Do you remember?

19          A.     Seems like I did when I first  
20 started.   And then I scheduled it for,  
21 you know, to skip a day in between  
22 because I had to work every night.   I  
23 couldn't go every day.   So, I had to do